IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 12TH JUNE 2007 / 22ND JYAISHTA 1929

WP(C).No. 4418 of 2007(A)

CMA.36/2003 of PRINCIPAL SUB COURT,ATTINGAL
I.A.2433/03 IN OS.218/2003 of MUNSIFF'S COURT,VARKALA

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PETITIONER:

RAJENDRAN NAIR, S/O. VELUPILLAI,
PUTHUVALVILA VEEDU, KANNAMBA DESOM,
VARKALA VILLAGE, REPRESENTED BY THE POWER OF
ATTORNEY HOLDER SHRI. VIKRAMAN NAIR,
PUTHUVALVILA VEEDU, KANNAMBA DESOM, VARKALA P.O.

BY ADV. SRI.M.R.RAJESH
SMT.A.K.PREETHA
SMT.BINDHYA JOSE

RESPONDENT:

GOPALAKRISHNAN NAIR, S/O. KUNJUKRISHNA
PILLAI, PUTHUVALVILA VEEDU, KANNAMBA DESOM,
VARKALA DESOM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C)No.4418 OF 2007

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DATED THIS THE 12TH JUNE, 2007

J U D G M E N T

Ext.P3 judgment of the lower appellate court confirming an order of injunction passed in favour of the plaintiff is under challenge in this proceeding under Article 227 of the Constitution.

2. Having considered the elaborate submissions addressed before me by Mr.M.R.Rajesh, counsel for the petitioner and having scanned Exts.P2 and P3, I am unable to say that they warrant correction in this Court's jurisdiction under Article 227 which is visitorial in nature and is expected to be invoked only in exceptional circumstances. I am not prepared to say that the impugned orders are so wholly unreasonable or are violative of law, statutory or settled, as to warrant interference. I decline relief. However, I direct the court below to expedite trial of the suit and dispose of the same at the earliest (if not already disposed of). The learned Munsiff will not be influenced by the observations in Exts.P2 and P3 regarding the merits of the contentions. The findings and observations in Exts.P2 and P3 will be treated by the learned Munsiff as provisional and decision will be taken in the suit on the basis of the evidence which comes on record. As regards the pathway in question, the status quo as found

by the trial court in Ext.P2 will be maintained by both parties till such time as the suit is disposed of. The issue regarding maintainability of the suit will be taken by the learned Munsiff as a preliminary issue and a decision given on that issue after hearing both sides, before the suit is tried

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF POWER OF ATTORNEY DT.15.5.04.

EXT.P2 – TRUE COPY OF ORDER DT.17.10.03 ON I.A.2433/03 IN O.S.218/03 OF MUNSIFF'S COURT, VARKALA

EXT.P3 – TRUE COPY OF JUDGMENT DT.31.7.2006 OF SUB COURT, ATTINGAL, ON CMA.36/03.